

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0420
Sales and Use Tax
For the Years 2001-2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales Tax- Imposition

Authority: IC 6-8.1-5-1; IC 6-8.1-5-4(a); IC 6-2.5-2-1.

The taxpayer protests the assessment of additional sales tax.

II. Tax Administration- Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2.

The taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer sells, installs, and monitors security alarm systems on both commercial and residential property. The Department conducted an audit of the taxpayer and assessed additional sales tax, penalties, and interest for tax years 2001-2003. The taxpayer submitted a protest challenging the assessment. The Department held a hearing by telephone and now presents this Letter of Findings, with additional facts to follow.

I. Sales Tax- Imposition

DISCUSSION

The taxpayer supplied the Department's auditor with limited amounts of records and failed to make all sales invoices available for examination. Nevertheless, the taxpayer did maintain Profit and Loss sheets for each year, in which the taxpayer had separated out sales and services. Using the profit and loss sheets, the auditor subtracted the amount of sales tax paid by the taxpayer from the total taxable sales, and determined the taxpayer had additional taxable sales subject to Indiana sales tax.

The taxpayer conceded that it may owe sale tax, in addition to the amounts it already remitted to the Department. However, the taxpayer argues the audit used inaccurate information to determine the additional sales tax amounts for tax years 2001-2003. The taxpayer claims items were mistakenly categorized on the profit and loss sheets. The taxpayer explains that ninety-five percent of the work it performs was for services and the items listed as sales on the profit and loss sheets were actually services. The taxpayer further explains that when it purchases equipment, it pays sales tax on the equipment at the time of purchase.

IC 6-2.5-2-1 imposes a sales tax on retail transactions made in Indiana. The sellers of the property are required to collect the sales tax from purchasers and remit that tax to the state. IC 6-2.5-2-1(b). Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. IC 6-8.1-5-4(a). The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. Id. If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. IC 6-8.1-5-1(a). Indiana Department of Revenue assessments are prima facie evidence the department's claim for unpaid taxes is valid. IC 6-8.1-5-1(b). The taxpayer has the burden of proving whether the department incorrectly imposed the assessment. Id.

During the course of the hearing, the taxpayer provided additional information to confirm that the information used in determining the amount of additional sales tax owed was inaccurate. To substantiate its contention, the taxpayer provided: a statement from its accountant attesting to the inaccuracy of the profit and loss sheet; sales tax liability reports for the tax years; and a vendor report showing where the taxpayer paid sales tax. However, the taxpayer did not produce source documents such as invoices or receipts to corroborate the sales tax liability report or the vendor report. Therefore, the information provided by the taxpayer is inadequate to sustain the taxpayer's burden of proof imposed under IC 6-8.1-5-1(b).

FINDING

The Department denies the taxpayer's protest.

II. Tax Administration- Negligence Penalty

DISCUSSION

IC 6-8.1-10-2.1(a)(3) provides in part that "if a person... incurs, upon examination by the department, a deficiency that is due to negligence...the person is subject to a penalty." Negligence is defined "as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-11-2(b). Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Id. Negligence is "determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

The Department may waive the penalty upon a showing that the failure to pay the deficiency was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1(d). Under 45 IAC 15-11-2(c),

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer argues the Department should waive the penalties since the assessment was based on the Department use of inaccurate information to calculate taxable sales. However, the taxpayer disregarded its duty to provide the Department with adequate records and sales invoices. This inattention of duty by the taxpayer resulted in an understatement of the taxpayer's taxable sales. Therefore, this inattention by the taxpayer constitutes negligence and the audit is correct in the imposition of a negligence penalty.

FINDING

The Department denies the taxpayer's protest.